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ALAMEDA COUNTY  
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*Monica Chen*

BY FAX

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**AMY CHAMBERLIN**

**SUPERIOR COURT OF CALIFORNIA**  
**COUNTY OF ALAMEDA**

14 AMY CHAMBERLIN, in the public interest, )  
15 )  
16 Plaintiff, )  
17 v. )  
18 CHURCH & DWIGHT COMPANY, INC., a )  
19 New Jersey corporation, and DOES 1 through )  
20 500, inclusive, )  
21 Defendants. )  
22 )

Case No. **RG18918240**  
**COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES**  
[Cal. Health and Safety Code Sec.  
25249.6, *et seq.*]

1 Amy Chamberlin, in the public interest, based on information and belief and investigation  
2 of counsel, except for information based on knowledge, hereby makes the following allegations:

3 **INTRODUCTION**

4 1. This Complaint seeks to remedy Defendant's failures to warn individuals in  
5 California that they are being exposed to wood dust (hereinafter "Wood Dust"), a substance known  
6 to the State of California to cause cancer. Such exposures have occurred, and continue to occur,  
7 through manufacture, distribution, sale and use of Defendant's (a) FelinePine 100% Natural Pine  
8 Original Non-clumping Litter; and (b) FelinePine 100% Natural Pine Original Clumping Litter.  
9 (Hereinafter, "Products.")

10 2. Under California's Proposition 65, Health & Safety Code § 25249.5, *et seq.*, it is  
11 unlawful for a business to knowingly and intentionally expose individuals in California to  
12 substances known to the State to cause cancer, birth defects or other reproductive harm without  
13 providing clear and reasonable warnings to individual exposures. Defendant introduces the  
14 Products contaminated with significant quantities of Wood Dust into the California marketplaces,  
15 exposing consumers to Wood Dust.

16 3. Despite the fact that Defendant exposes consumers to Wood Dust, Defendant has,  
17 during the operative period, provided no warnings about the carcinogenic hazards associated with  
18 Wood Dust exposures. Defendant's conduct thus violated the warning provision of Proposition  
19 65, Health & Safety Code § 25249.6.

20 **PARTIES**

21 4. Plaintiff brings this enforcement action in the public interest pursuant to Health &  
22 Safety Code § 25249.7(d).

23 5. Defendant, CHURCH & DWIGHT COMPANY, INC., ("Defendant") is a person  
24 in the course of doing business within the meaning of Health & Safety Code § 25249.11.  
25 Defendant manufactures, distributes, and/or sells the Products for sale and use in California.

26 6. The true names of DOES 1 through 500 are unknown to Plaintiff at this time. When  
27 their identities are ascertained, the Complaint shall be amended to reflect their true names.

1 **JURISDICTION AND VENUE**

2 7. The Court has jurisdiction over this action pursuant to Health & Safety Code §  
3 25249.7, which allows enforcement in any court of competent jurisdiction and pursuant to  
4 California Constitution Article VI, Section 10, because this case is a cause not given by statute to  
5 other trial courts.

6 8. This Court has jurisdiction over Defendant because it is a business entity that does  
7 sufficient business, has sufficient minimum contacts in California, or otherwise intentionally avails  
8 itself of the California market through the sale, marketing, or use of the Product in California  
9 and/or by having such other contacts with California so as to render the exercise of jurisdiction  
10 over it by the California courts consistent with traditional notions of fair play and substantial  
11 justice.

12 9. Venue is proper in San Francisco County Superior Court because one or more of  
13 the violations arise in San Francisco County, and/or because Defendant has not designated any  
14 principal place of business within the state of California.

15 **BACKGROUND**

16 10. The people of the State of California have declared by initiative under Proposition  
17 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or  
18 other reproductive harm.” Proposition 65 § 1(b).

19 11. To effectuate this goal, Proposition 65 prohibits exposing people to substances  
20 listed by the State of California as known to cause cancer, birth defects or other reproductive harm  
21 without a “clear and reasonable warning” unless the business responsible for the exposure can  
22 prove that it fits within a statutory exemption. Health & Safety Code § 25249.6 states, in pertinent  
23 part:

24 No person in the course of doing business shall knowingly and intentionally expose any  
25 individual to a chemical known to the state to cause cancer or reproductive toxicity without first  
26 giving clear and reasonable warning to such individual.

27 12. On December 18, 2009, the State of California officially listed Wood Dust as a  
28 substance known to cause cancer. On December 18, 2010, one year after it was listed as a

1 substance known to cause cancer, Wood Dust became subject to the clear and reasonable warning  
2 requirement regarding carcinogens under Proposition 65. 27 C.C.R. 27001(c); Health & Safety  
3 Code § 25249.10(b).

4 13. Defendant's Products contain Wood Dust such that consumers using the Products  
5 are exposed to Wood Dust. The primary route of exposure for the violations is through inhalation.  
6 These exposures occur everywhere throughout California where the Products are used.

7 14. No clear and reasonable warning is provided with the Products regarding the  
8 carcinogenic hazards of Wood Dust.

9 15. Any person acting in the public interest has standing to enforce violations of  
10 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid  
11 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action  
12 within such time. Health & Safety Code § 25249.7(d).

13 16. More than sixty days prior to naming the Defendant herein, Plaintiff provided a 60-  
14 Day "Notice of Violation of Proposition 65" to the California Attorney General, the District  
15 Attorneys of every California city with a population greater than 750,000, and to Defendant. In  
16 compliance with Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), each Notice  
17 included the following information: (1) the name and address of each violator; (2) the statute  
18 violated; (3) the time period during which violations occurred; (4) specific descriptions of the  
19 violations, including (a) the routes of exposure to the Wood Dust from the Products, and (b) the  
20 specific type of Products sold and used in violation of Proposition 65; and (5) the name of the  
21 specific Proposition 65-listed substance that is the subject of the violations described in each  
22 Notice.

23 17. Plaintiff also sent a Certificate of Merit for each Notice to the California Attorney  
24 General, the District Attorneys of every county in California, the City Attorneys of every  
25 California city with a population greater than 750,000 and to each named Defendant. In  
26 compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3101, each Certificate  
27 certified that Plaintiff's counsel: (1) has consulted with one or more persons with relevant and  
28 appropriate experience or expertise who reviewed facts, studies or other data regarding the

1 exposures to Wood Dust alleged in each Notice; and (2) based on the information obtained through  
2 such consultations, believes that there is a reasonable and meritorious case for a citizen  
3 enforcement action based on the facts alleged in each Notice. In compliance with Health & Safety  
4 Code § 25249.7(d) and 11 C.C.R. § 3102, each Certificate served on the Attorney General included  
5 factual information—provided on a confidential basis—sufficient to establish the basis for the  
6 Certificate including the identity of the person(s) consulted by the Plaintiff's counsel and the facts,  
7 studies or other data reviewed by such persons.

8 18. None of the public prosecutors with the authority to prosecute violations of  
9 Proposition 65 has commenced and/or is diligently prosecuting a cause of action against Defendant  
10 under Health & Safety Code § 2529.5 *et seq.*, based on the claims asserted in Plaintiff's Notice.

11 19. Defendant knows and intends that individuals in California will use the Products,  
12 thus exposing them to Wood Dust.

13 20. Under Proposition 65, an exposure is "knowing" where the party responsible for  
14 such exposure has:

15 Knowledge of the fact that a[n]...exposure to a chemical listed pursuant to [Health &  
16 Safety Code § 25249.8(a)] is occurring. No knowledge that the...exposure is unlawful is required.

17 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.,*  
18 Final Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division  
19 2, § 12201).

20 21. Defendant has been informed of the wood Dust in the Products by the 60-Day  
21 Notice of Violation and accompanying Certificate of Merit served on them.

22 22. Defendant further has, throughout the operative period, had knowledge its Products  
23 contain Wood Dust.

24 23. As an entity that manufactures, distributes and/or sells the Products for use in the  
25 California marketplace, each Defendant knew or should have known that the Products contain  
26 Wood Dust and that individuals who use the Products will be exposed to Wood Dust. The  
27 exposures to consumers who use the Products are a natural and foreseeable consequence of  
28 Defendant's actions of placing the Products into the stream of commerce.



1           1.     That the Court, pursuant to Health & Safety Code § 25249.7(b), assess civil  
2 penalties against each Defendant in an amount up to \$2,500 per day for each violation of  
3 Proposition 65;

4           2.     That the Court, pursuant to Health & Safety Code § 25249.7(a), permanently enjoin  
5 Defendant from offering the Products for sale in California without either reformulating the  
6 Products such that no Proposition 65 warnings are required or providing prior clear and reasonable  
7 warnings, as Plaintiff shall specify in further application to the Court;

8           3.     That the Court pursuant to Health & Safety Code § 25249.7(a), order Defendant to  
9 take action to stop ongoing unwarranted exposures to Wood Dust resulting from use of the  
10 Products sold by Defendant, as Plaintiff shall specify in further application to the Court;

11          4.     That the Court, pursuant to Code of Civil Procedure § 1021.5 or any other  
12 applicable statute, theory, rule or doctrine, grant Plaintiff reasonable attorneys' fees and costs of  
13 suit; and

14          5.     That the Court grant such other and further relief as may be just and proper.

15  
16 Dated: August 24, 2018

PACIFIC JUSTICE CENTER

17  
18  
19 By:



Robert B. Hancock  
Attorneys for Plaintiff